

Additional Insured Status

To Be, or Not To Be

What is Additional Insured Status

- ▶ Adds you to the definition of insured on the policy held by the other party.
- ▶ You are not at the same level as the Named Insured, but you are covered like a partner or officer or employee of the corporation.
- ▶ Different than being an “indemnity”, which is probably what you want to be.



What does AI do for you

- ▶ If a suit is filed against you for something:
 - Covered by the policy; and
 - Covered by the indemnification agreement; and
 - The Insured on the policy has some negligence,

Then you can tender that claim to the insurance company.



Why do I Want to Be AI

- ▶ Because my insurance agent says I always want to be AI of anyone I work with.
- ▶ Because I want the other party's insurer to cover claims, and I don't have to turn the claim into my insurer.



What AI does not do

- ▶ Does not expand the coverage.
- ▶ Does not increase the limits per occurrence or in the aggregate.
- ▶ Does not reserve your settlement rights.
- ▶ Does not involve you in defense strategy.
- ▶ More importantly, it does not cover anything that was not included in the indemnification agreement.



It's Really all About Indemnification

You want to protect the county from paying for a loss that someone else caused.

- ▶ Indemnification requires another party you are doing business with to reimburse your costs of claims that arise out of the their activities which you were not negligent for.
- ▶ Whether or not they have insurance.
- ▶ Insurance is just a way to show they can make good on this promise.



Indemnification–Top 10

- ▶ Reasons to have strong indemnification language for the county, and not negotiate limitations.



Number 10

The other party is typically in the best position to manage the risk.

- ▶ Ability to recognize risk
- ▶ Ability to transfer risk
- ▶ Ability to prevent losses
- ▶ Ability to manage claims or losses



Number 9

Failure of a private business has less of an impact. While painful, private businesses have various legal protections

- ▶ Incorporation
- ▶ Reorganization
- ▶ Bankruptcy
- ▶ The ability to reopen under a new name/venture.



Number 8

The public entity typically has the most to lose.

- ▶ Typically the deepest pockets
- ▶ Has the obligation to protect vast public assets
- ▶ Litigation creates additional political risk
- ▶ Held to a high standard by courts
- ▶ Failure is not an option



Number 7

Public entities are often not enthusiastic about, nor good at subsequent litigation or subrogation.



Number 6

Having strongly worded Indemnity and Hold Harmless Clause provides greater bargaining power when it comes to settling losses without litigation or public debacle.



Number 5

Changes to the indemnity clause typically have great potential impacts.

- ▶ Limits protection for county
- ▶ Excludes coverage from other party's insurer
- ▶ Sets precedent



Number 4

Limiting or capping liability does not reflect or correspond with the nature of catastrophic loss.

- ▶ Limiting liability in the indemnification to the contract amount does not recognize the risk of loss to the county



Number 3

Parties adverse to broad indemnification likely have poor experience or poor insurance .

- ▶ Strong contractual terms, including indemnification, is a great way to screen bidders.



Number 2

Changing indemnification and insurance requirements after a bid is an unfair competitive practice.

- If others included cost of indemnification and insurance in there bid, then you did not compare apples to apples.



Number 1

The courts will not require the other party to indemnify you for anything that is not included in the indemnification language in the contract

➤ Even if you are Additional Insured



Indemnification + ?

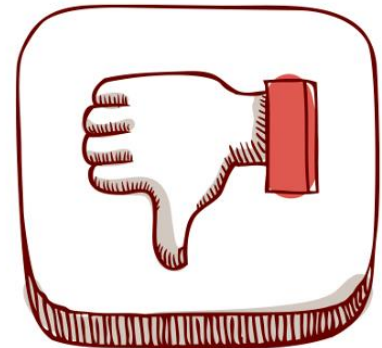
Once you have good indemnification language you want to assure the other party can live up to that promise.

- ▶ Strong financial position (self-insured)
- ▶ Collateral (LOC or other)
- ▶ Require Additional Insured status with reference to contract
- ▶ Require insurance with Contractual Liability



Cons of AI Status

- ▶ Unknown Insurer
- ▶ Loss of Choice of Defense
- ▶ Loss of Settlement Authority
- ▶ Possible loss of Governmental Immunity
- ▶ Possible loss of Tort Caps
- ▶ Required Waiver of Subrogation Rights
 - Suing your friends
 - Suing your insurer
- ▶ “Other Insurance” clause may negate coverage



What is Contractual Liability

Term in insurance policy which recognizes policy holder's obligations to others

- ▶ Includes obligation to indemnify
- ▶ Provided automatically in most policies (may need to be endorsed)
- ▶ Allows you to be reimbursed rather than depend on their insurance



Contract Language

- ▶ Additional Insured
 - Party 1 will indemnify, defend and hold harmless County for any and all claims, suits...

- ▶ Contractual Liability
 - Party 1 will indemnify County for all costs associated with any and all claims, suits or..., including the cost of defense...



To Be, Or Not To Be

- ▶ What is important to you

